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6 Attorneys for Plaintiff INDUSTRY
7 ADVANCED TECHNOLOGIES, INC.

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 INDUSTRY ADVANCED
13 TECHNOLOGIES, INC., a California
corporation,

14 Plaintiff,

15 v.

16
17 MATTHEWS STUDIO EQUIPMENT,
INC. a California corporation;
18 PROGRESSIVE MANUFACTURING,
a sole proprietorship; McCANTS
19 INDUSTRIES, INC., A California
Corporation.

20 Defendants.
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Case No.

COMPLAINT FOR:

1. **DECLARATORY RELIEF**
2. **TRADEMARK INFRINGEMENT**
3. **FALSE DESIGNATION OF ORIGIN**
4. **COMMON LAW TRADEMARK INFRINGEMENT**
5. **STATUTORY UNFAIR COMPETITION**
6. **COMMON LAW UNFIAR COMPETITION**
7. **BREACH OF CONTRACT**
8. **INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS**

JURY DEMANDED

27 1. COMES NOW Plaintiff Industry Advanced Technologies, Inc. ("IAT"
28 or "Plaintiff") and complains against Defendants Matthews Studio Equipment, Inc.

1 (“MSE”), Progressive Manufacturing (“Progressive”) and McCants Industries
2 (“McCants”), and DOES 1 through 10 (collectively, “Defendants”), as follows:

3
4 **NATURE OF ACTION**

5 2. By this Complaint, Plaintiff IAT brings claims arising from wrongful
6 manufacturing, distribution, advertising, and sales of counterfeit products marketed
7 as Plaintiff’s INTEL-A-JIB™ camera mount product.

8 3. In 2009, Plaintiff entered into an “Intel-A-Jib Pro” distribution
9 agreement with Defendant MSE regarding Plaintiff’s INTEL-A-JIB™ (the “Mark”)
10 camera mount product (the “2009 MSE Agreement”). That agreement was
11 terminated in September, 2011. Plaintiff decided to stop manufacturing and
12 distributing, and, in 2011, entered into a Manufacturing, Distribution, and
13 Trademark License Agreement with Defendant Progressive. Sometime in late 2015
14 or early 2016, Progressive sold its business to Defendant McCants, which also
15 signed a Confidentiality and Non-Disclosure Agreement.

16 4. In late 2016 and early 2017, Plaintiff had a variety of interactions with
17 MSE and McCants that led him to believe that its INTEL-A-JIB™ camera mount
18 product was being manufactured and sold without a full accounting. Plaintiff
19 demanded return of products and drawings, but never received assurances that all the
20 product was returned.

21 5. IAT inquired of Defendants and received either implausible
22 explanations or no response at all. Eventually, Defendant MSE asserted that it
23 owned the trademark rights to INTEL-A-JIB and even filed a fraudulent trademark
24 application stating that it knew of nobody else who had a right to use the Mark. At
25 that point, it became obvious that MSE had been colluding with McCants and/or
26 Progressive to provide its own counterfeit INTEL-A-JIB™ camera mount product
without having to account to Plaintiff.

27 6. Plaintiff therefore is constrained to bring this action for declaratory
28 relief seeking a declaration of ownership of the INTEL-A-JIB trademark and

1 bringing claims for trademark infringement, interference with contract, breach of
2 contract, unfair competition and related claims.

3
4 **PARTIES**

5 7. Plaintiff IAT is a California corporation with its principal place of
6 business in Simi Valley, California.

7 8. Defendant Matthews Studio Equipment, Inc. is a California corporation
8 with its principal place of business in Burbank, California.

9 9. Defendant McCants Industries is a California corporation with its
10 principle place of business in Camarillo, California.

11 10. Defendant Progressive Manufacturing is, on informatin and belief, a
12 sole proprietorship based in or around Simi Valley, California.

13 11. Plaintiff is currently unaware of the identities of Defendants DOES 1-
14 10, inclusive, and for that reason sues them via fictitious names.

15 **JURISDICTION AND VENUE**

16 12. This is a claim for trademark infringement and unfair competition,
17 under Title 15, U.S.C. Sections 1051 et seq., as amended (hereinafter the “Lanham
18 Act”).

19 13. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
20 §§1331, 1338(a), 1367 and the U.S. Constitution because this Complaint raises
21 federal questions under the Lanham Act. This Court further has jurisdiction under
22 the Declaratory Judgment Act, 28 U.S.C. §§ 2201 – 2202.

23 14. Defendants have transacted business within the State of California, and
24 the Central District of California, and are subject to the personal jurisdiction of this
25 Court.

26 15. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and
27 1400(b).

28 **GENERAL ALLEGATIONS**

1 16. This Complaint arises out of business arrangements between Plaintiff
2 IAT and Defendants. Plaintiff sells a product known as the INTEL-A-JIB™ camera
3 mount. The INTEL-A-JIB™ camera mount is used to mount high-end cameras and
4 camera pan/tilt remote head systems, usually for professional film and video use.
5 The INTEL-A-JIB™ camera mount is unique in that its design allows it to be
6 assembled and broken down and put into a case or bag without the use of tools.

7 17. Plaintiff has been manufacturing and selling the INTEL-A-JIB™
8 camera mount since approximately 2004. Plaintiff has owned and used, or licensed
9 the domain names <intel-a-jib.com> and <intelajib.com> since approximately 2007.
10 Plaintiff has been selling, renting or licensing under the INTEL-A-JIB™ Mark since
11 approximately 2004.

12 18. In 2009, Plaintiff entered into an agreement with Defendant MSE to
13 establish MSE as the exclusive worldwide distributor of IAT's INTEL-A-JIB™ Pro
14 dual length jib arm product (the "2009 Agreement"). The term of the 2009
15 Agreement was two years. Pursuant to the 2009 Agreement, MSE had a license to
16 use the INTEL-A-JIB™ trademark and related trademarks, and, upon termination of
17 the 2009 Agreement, MSE was to cease use of the same. MSE was required to mark
18 INTEL-A-JIB™ camera mounts. MSE also acknowledged that IAT owned all
19 intellectual property rights to the INTEL-A-JIB™ camera mounts. A true and
20 correct copy of the 2009 Agreement is attached hereto as Exhibit A and incorporated
21 by reference.

22 19. On September 26, 2011, Plaintiff terminated the 2009 Agreement.
23 Plaintiff also decided to license the manufacturing, distribution and trademark of its
24 INTEL-A-JIB™ camera mounts though Defendant Progressive, which sold to MSE.
25 On September 27, 2011, Plaintiff entered into a Manufacturing, Distribution &
26 Trademark License Agreement with Defendant Progressive Manufacturing (the
27 "2011 Progressive Agreement"). The term of the 2011 Progressive Agreement was
28 five years. The 2011 Progressive Agreement also included a limited license to use

1 the INTEL-A-JIB mark. A copy of the 2011 Progressive Agreement is attached
2 hereto as Exhibit B and incorporated herein by reference.

3 20. The Progressive Agreement states at Paragraph 5:

4 any and all changes to engineering and designs . . . shall not disclose or
5 transfer to any third party any engineering or designs without the express
6 written consent of LICENSOR. LICENSEE shall provide LICENSOR with
7 copies of all engineering used in the manufacturing of the licensed products.

8 21. Upon information and belief, at some point in late 2015 or early 2016,
9 Defendant Progressive was sold to Defendant McCants Industries, Inc. In July,
10 2016, Plaintiff and McCants entered into a Confidentiality and Non-Disclosure
11 Agreement (“2016 McCants Agreement”). Pursuant to that Agreement, McCants
12 was to provide manufacturing services for the INTEL-A-JIB™ camera mount.
13 Pursuant to the 2016 Agreement, all information disclosed under the agreement was
14 to remain confidential, including manufacturing information and customer
15 information, including the identities of all of Plaintiff’s customers. A copy of the
16 2016 McCants Agreement is attached hereto as Exhibit C and incorporated by
17 reference herein.

18 22. The 2016 McCants Agreement provided, *inter alia*, that Confidential
19 Information protected under the Agreement included:

20 “patterns, tooling, molds, jigs, dies, methods, techniques, specifications;”
21 “production data, technical and engineering data;” “purchasing and internal
22 costs information, internal services and operational manuals;” “price and cost
23 data;” and “names of customers and their representatives, contracts, and their
24 contents and parties customer services, data provided by customers and the
25 type, quantity and specifications of products and services purchased, leased,
26 licensed or received by clients of the Provider.” (Paragraph 2.)

27 23. The 2016 McCants Agreement also provided that McCants “will not,
28 for a period of five (5) years, be directly or indirectly involved with a business that

1 manufactures the same product that is the subject matter (the Permitted Purpose') of
2 this Agreement." (Paragraph 8.)

3 24. The 2016 McCants Agreement also provided that Mcants "will not
4 divert or attempt to divert from the Provider any business the Provider had enjoyed,
5 solicited, or attempted to solicit, from its customers at the time the parties entered
6 into this Agreement." (Paragraph 7.)

7 25. During the entire time following the termination of 2009 Agreement,
8 Defendant MSE continued to distribute and sell the INTEL-A-JIB™ camera mount
9 on a non-exclusive basis. Defendant MSE received and paid multiple invoices from
10 Plaintiff, all designating INTEL-A-JIB as a trademark of Plaintiff, and Defendant
11 Progressive paid Plaintiff royalties for the use of its INTEL-A-JIB trademark under
12 the 2011 Agreement. MSE received many invoices from Plaintiff showing that it
13 controlled the Mark. MSE's paperwork acknowledged that Plaintiff controlled the
14 Mark.

15 26. Despite termination of the 2009 Agreement, MSE and Plaintiff still
16 operated within the spirit of that Agreement, with MSE continuing to recognize
17 Plaintiff's trademark rights and proprietary rights in Plaintiff's design, and MSE
18 continuing to pay defendant Progressive and Plaintiff for orders.

19 27. In 2017, it came to the attention of Plaintiff that Defendants had
20 committed multiple violations of the 2009 MSE Agreement, the 2011 Progressive
21 Agreement, and the 2016 McCants Agreement. Specifically:

22 (a) Defendant Progressive refused to return engineering drawings of the
23 INTEL-A-JIB™ camera mount, even though Plaintiff expressly requested
24 return of those drawings.

25 (b) Defendant McCants manufactured more of the INTEL-A-JIB™ products
26 and components than necessary under legitimate purchase orders, thus
27 creating a surplus of proprietary products for its own use. Defendant McCants
28 demanded payment for return of those items.

1 (c) Defendant McCants began dealing directly with Defendant MSE for the
2 INTEL-A-JIB™ camera mount products.

3 (d) Defendant MSE began to represent that it was the owner of the INTEL-A-
4 JIB trademark, going so far as attempting to register the trademark with the
5 United States Patent and Trademark Office. That trademark application
6 included a certification under penalty of perjury, signed by MSE's attorney,
7 that MSE knew of no other entity that could claim rights to the INTEL-A-JIB
8 mark. It also claimed a first use date of 2011. Both of these representations
9 are false and constitute fraud on the trademark office as well as violation of
10 the 2009 Agreement.

11 (e) On information and belief, Defendants began working together to "cut
12 out" Plaintiff from the INTEL-A-JIB™ camera mount market, even though
13 all Defendants had, at various times, recognized that the INTEL-A-JIB
14 trademark, customer information and all related intellectual property are
15 owned by Plaintiff.

16 28. On information and belief, MSE still sells products under the Mark, and
17 has recently told prospective customers that it "cannot keep them in stock."
18 Amazingly, MSE recently attempted to order components for INTEL-A-JIB™
19 products from Plaintiffs.

20 29. During the entire time following the termination of 2009 Agreement,
21 Defendant MSE continued to distribute and sell the INTEL-A-JIB™ camera mount
22 on a non-exclusive basis. Defendant MSE received and paid multiple invoices from
23 Plaintiff, all designating INTEL-A-JIB as a trademark of Plaintiff, and defendant
24 Progressive paid Plaintiff royalties for the use of its INTEL-A-JIB trademark under
25 the 2011 Progressive Agreement.

26 **FIRST CLAIM FOR RELIEF**

27 **For Declaratory Relief**

28 **(Against Defendant MSE)**

1 30. Plaintiff re-alleges the facts above in paragraphs 1 - 29 as though fully
2 set forth herein.

3 31. An actual controversy also exists between the parties regarding whether
4 Plaintiff owns the trademark INTEL-A-JIB for camera-related products. Plaintiff
5 has been licensing and using INTEL-A-JIB for camera-related products since at least
6 2004.

7 32. Plaintiff has licensed the mark, received royalties and overseen the
8 quality of goods produced under the Mark.

9 33. On or about June 26, 2017, Plaintiff's counsel received a letter from its
10 former distributor stating that it owned the Mark. Plaintiff later discovered that
11 Defendant MSE filed for a federal registration on the mark, claiming priority of use
12 back to 2011. The application was signed for by Defendant MSE's attorney, who
13 knew of a dispute between the parties as to ownership of the mark.

14 34. There is thus currently a justiciable dispute between the parties
15 involving the ownership of the Mark INTEL-A-JIB for use in connection with
16 camera mounts and jib products. Plaintiff is continuing to use the Mark and intends
17 to do so in the future.

18 35. Therefore, Plaintiff requests that the Court grant declaratory relief,
19 declaring that Plaintiff owns the INTEL-A-JIB Mark in connection with camera
20 mounts and designs.

21 36. Defendants' wrongful activities have caused, and unless enjoined by
22 this Court will continue to cause, irreparable injury and other damage to Plaintiff's
23 business, reputation and goodwill. Plaintiff has no adequate remedy at law.

24 **SECOND CLAIM FOR RELIEF**

25 **For Trademark Infringement -- Lanham Act Section 43(a)**

26 **(Against McCants and MSE)**

27 37. Plaintiff re-alleges the facts above in paragraphs 1 - 29 as though fully
28 set forth herein.

1 38. Defendant MSE continues to use the INTEL-A-JIB trademark without
2 Plaintiff's permission. Upon information and belief, McCants still sells products as
3 INTEL-A-JIB products.

4 39. Defendants' use of the Mark is likely to cause confusion as to the
5 source and origin of the Defendants' products, as well as mislead consumers to
6 believe that Defendants' jib products arise from Plaintiff.

7 40. Defendants' wrongful activities have caused, and unless enjoined by
8 this Court will continue to cause, irreparable injury and other damage to Plaintiff's
9 business, reputation and goodwill. Plaintiff has no adequate remedy at law.

10 41. Defendants' conduct as alleged herein has irreparably damaged and will
11 continue to irreparably damage Plaintiff's market reputation, and goodwill, and may
12 discourage current and potential customers from dealing with Plaintiffs. Such
13 irreparable harm will continue unless Defendants' actions are enjoined during the
14 pendency of this action, and thereafter.

15 42. Plaintiff is informed and believes, and on that basis avers, that
16 Defendants' acts alleged herein have been undertaken with full knowledge of
17 Plaintiff's rights and with the willful and deliberate intent to cause confusion,
18 mistake and deception among members of the relevant public and to trade on the
19 goodwill associated with Plaintiff's INTER-A-JIB Mark.

20 **THIRD CLAIM FOR RELIEF**

21 **False Designation of Origin -- 15 U.S.C. § 1125(a))**

22 **(Against All Defendants)**

23 43. Plaintiff repeats, realleges and incorporates by reference in this
24 paragraph the allegations contained in paragraphs 1 - 29 of this Complaint as if fully
25 set forth herein.

26 44. Plaintiff built considerable goodwill and public recognition in the
27 INTEL-A-JIB Mark.

28 45. Plaintiff does not authorize or consent to Defendants' use of the
INTEL-A-JIB Mark. Defendants' use of the INTEL-A-JIB Mark by, without

1 limitation, creating, promoting, offering for sale and selling INTEL-A-JIB products
2 without Plaintiff's permission is likely to cause, confusion, mistake, and/or
3 deception of others as to the origin, sponsorship, approval, affiliation, or association
4 of Defendants' goods and services and Plaintiff's goods and services, in violation of
5 the Section 43(a) of the Lanham Act, codified at 15 U.S.C. § 1125(a).

6 46. Defendants' use of the marks has caused and will continue to cause
7 damage to Plaintiff in an amount to be proven at trial by, *inter alia*, confusing
8 consumers and constitutes unfair competition and infringement of Plaintiffs' marks
9 in violation of 15 U.S.C. § 1125(a).

10 47. Defendants' conduct as alleged herein has irreparably damaged and will
11 continue to irreparably damage Plaintiff's market reputation, and goodwill, and may
12 discourage current and potential customers from dealing with Plaintiffs. Such
13 irreparable harm will continue unless Defendants' actions are enjoined during the
14 pendency of this action, and thereafter.

15 48. Plaintiff is informed and believes, and on that basis avers, that
16 Defendants' acts alleged herein have been undertaken with full knowledge of
17 Plaintiff's rights and with the willful and deliberate intent to cause confusion,
18 mistake and deception among members of the relevant public and to trade on the
19 goodwill associated with Plaintiff's INTEL-A-JIB Mark.

20 **FOURTH CLAIM FOR RELIEF**

21 **For Common Law Trademark Infringement**

22 **(Against All Defendants)**

23 49. Plaintiff repeats, realleges and incorporates by reference in this
24 paragraph the allegations contained in paragraphs 1 - 29 of this Complaint as if fully
25 set forth herein.

26 50. The above-described acts of Defendants constitute common law
27 trademark infringement. Such acts have caused and will continue to cause
28 irreparable and immediate injury to Plaintiff for which it has no adequate remedy at

1 law. Unless Defendants are restrained by this Court from continuing the acts alleged
2 herein, these injuries will continue to occur.

3 51. Plaintiff is informed and believes, and on that basis avers, that the
4 foregoing acts of the Defendants are fraudulent, oppressive, willful and malicious in
5 that they have been undertaken with a conscious disregard of Plaintiff's rights and
6 with a desire to injure Plaintiff's business and to improve their own, and entitle
7 Plaintiff to punitive or exemplary damages.

8 **FIFTH CLAIM FOR RELIEF**

9 **For Unfair Competition, Cal. Bus. & Prof. Code §17200**

10 **(Against All Defendants)**

11 52. Plaintiff repeats, realleges and incorporates by reference in this
12 paragraph the allegations contained in paragraphs 1 - 29 of this Complaint as if fully
13 set forth herein.

14 53. Defendants' actions as described herein constitute unlawful, unfair or
15 fraudulent business practices as those terms are defined in Cal. Bus. & Prof. Code §
16 17200.

17 54. Plaintiff is entitled to restitution or disgorgement of all profits gained by
18 Defendants as a result of their unfair competition. They are further entitled to an
19 injunction against further unfair business practices.

20 55. Such acts have caused and will continue to cause irreparable and
21 immediate injury to Plaintiff for which Plaintiff has no adequate remedy at law.
22 Unless Defendants are restrained by this Court from continuing the acts alleged
23 herein, these injuries will continue to occur.

24 **SIXTH CLAIM FOR RELIEF**

25 **For Common Law Unfair Competition**

26 **(Against all Defendants)**

27 56. Plaintiff repeats, realleges and incorporates by reference in this
28 paragraph the allegations contained in paragraphs 1 – 29 of this Complaint as if fully
set forth herein.

1 57. The above-described acts of Defendants constitute common law unfair
2 competition in that Defendants are passing off their goods and services as those of
3 the Plaintiff. Such acts have caused and will continue to cause irreparable and
4 immediate injury to Plaintiff for which Plaintiff has no adequate remedy at law.
5 Unless Defendants are restrained by this Court from continuing the acts alleged
6 herein, these injuries will continue to occur.

7 58. Plaintiff is informed and believes, and on that basis avers, that the
8 foregoing acts of the Defendants are willful and malicious in that they have been
9 undertaken with a conscious disregard of the Plaintiff's rights and with a desire to
10 injure the Plaintiff's business and to improve their own, such that punitive or
11 exemplary damages should be awarded against Defendants.

12 **SEVENTH CLAIM OF RELIEF**

13 **For Breach of Contract**

14 **(Against All Defendants)**

15 59. Plaintiff repeats, realleges and incorporates by reference in this
16 paragraph the allegations contained in paragraphs 1 - 29 of this Complaint as if fully
17 set forth herein.

18 60. Each of the Defendants here has breached their contract with Plaintiff.
19 Specifically, Defendant MSE has sold items in violation of the Distribution
20 Agreement and has wrongfully asserted intellectual property rights.

21 61. Defendant McCants, the successor to Progressive Manufacturing, has
22 violated the McCants Confidentiality and Non-disclosure Agreement by, *inter alia*,
23 entering into the jib business; soliciting Plaintiff's customers; utilizing Plaintiff's
24 proprietary manufacturing technology; and, as these terms are defined in the
25 McCants Agreement, wrongfully utilized Plaintiff's Work Product, Other
26 Proprietary Data, Production Processes and Customer data.

27 62. Defendant Progressive Manufacturing has violated his contract by
28 failing to return copies of engineering information used in the manufacturing of the
licensed products, in violation of paragraph 4(b).

PRAYER FOR RELIEF

WHEREFORE, on the basis of the foregoing wrongful acts by Defendants, Plaintiff IAT prays for judgment as hereinafter set forth:

1. For a Declaration that Plaintiff owns all rights in the INTEL-A-JIB trademark and service mark;
2. For special and general damages in an amount to be ascertained at trial;
3. For punitive or exemplary damages;
4. For an order declaring Plaintiff's ownership of all intellectual property rights and proprietary rights in connection with the INTEL-A-JIBTM camera mounts;
5. For the imposition of a constructive trust holding all income derived from Plaintiff's property and trademarks;

1 6. For a preliminary and permanent injunction restraining Defendants
2 from (i) approaching Plaintiff's customers and otherwise violating their duties of
3 confidentiality and non-petition under the Agreements, and (ii) violating Plaintiff's
4 trademark and service mark rights;

5 7. For a prejudgment writ of attachment, as necessary;

6 8. For attorneys' fees and costs of suit herein; and

7 9. For such further relief as this court shall deem just and proper.

8 DATED: July 6, 2017

KARISH & BJORGUM, PC

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10
11 Eric Bjorgum
12 ATTORNEYS FOR PLAINTIFF
13 INDUSTRY ADVANCED
14 TECHNOLOGIES, INC.
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REQUEST FOR JURY TRIAL

Pursuant to Fed.R.Civ.P. 38(b), Plaintiff hereby requests a trial by jury of all issues raised by its counterclaims which are properly triable to a jury.

Dated: July 6, 2017

Respectfully submitted,



By: _____

A. Eric Bjorgum

KARISH & BJORGUM PC

Attorneys for Plaintiff INDUSTRY

ADVANCED TECHNOLOGIES, INC.